Supreme Court, U.S.
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No. 92-883

In The

Supreme Court of the United States

October Term, 1992

CHARLES E. BERRY,

Petitioner,

vs.

A. DOE, J. DOE, HOSANA A. HUCK, MARIANNE McKINLEY, REBECCA PRICE, and NANCY CRAWFORD and MELISSA WALKER as Representative Parties on Behalf of a Definable Class,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

REPLY BRIEF FOR PETITIONER

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SUPPLEMENTAL STATEMENT OF THE CASE

In only one of these five damage suits removed under the Civil Rights Removal Act, 28 U.S.C. § 1443(1), have the Respondents opposed issuance of the Writ of Certiorari. Respondents Huck and McKinley's Brief in Opposition to the Petition in its own right is sufficient reason to grant the Petition. Their argument that the Equal Protection Clause of the Fourteenth Amendment and the Ku Klux Klan Act, 42 U.S.C. § 1985(3), are not laws providing for specific civil rights stated in terms of racial equality is devoid of reason. Their second principal argument, that a § 1443(1) removal is not proper unless the defendant has been deprived of equal civil rights by reason of a discriminatory state enactment, crystallizes why the Petition should be granted. That argument was adopted by the district court and uncritically affirmed *per curiam* by the Eighth Circuit, 967 F.2d 1255 (1992), even though it was directly contrary to the holding in *Georgia v. Rachel*, 384 U.S. 780, 804 (1966). Certiorari should issue to correct this conflict created by the Eighth Circuit's ruling.

Respondents' allegation at pages 24-26 of their Brief that Petitioner's notices of removal were untimely merit no consideration. As Respondents concede, neither the district court nor the Eighth Circuit discussed, much less ruled on that claim. Therefore, it is not ripe for the Court.

Respondents include factual arguments about an interpleader case involving ownership of videotapes which are the subject of actions for punitive damages against Petitioner. *See* Respondents' Brief at 9-11. Certiorari was not sought on the interpleader case because Respondents finally produced the videotapes in Mr. Berry's federal civil rights action. Thus, there are only five cases before the Court, not six as Respondents state.

I.

THE EQUAL PROTECTION CLAUSE AND 42 U.S.C. § 1985(3), INVOKED BY PETITIONER ON REMOVAL, ARE LAWS PROVIDING FOR EQUAL CIVIL RIGHTS STATED IN TERMS OF RACIAL EQUALITY UNDER THE CIVIL RIGHTS REMOVAL ACT.

Nothing in this Court's jurisprudence supports the vapid proposition advocated by Respondents that to justify a § 1443(1) removal the rights denied must arise under a federal law that proscribes only race discrimination. *See* Respondents' Brief at 15-17. Indeed, the Court in *Rachel* held the Civil Rights Act of 1964 was a law that provided for civil rights in terms of racial equality. 384 U.S. at 792-93. Section 201(a) also prohibits religious and national origin discrimination. 42 U.S.C. § 2000(a). Moreover, the Court has recognized other statutes, such as 42 U.S.C. §§ 1971 and 1981, not limited to redressing only race discrimination, as proper bases for § 1443(1) removal. *Greenwood v. Peacock*, 384 U.S. 808, 825 (1966). Laws which at least in part prohibit racial discrimination, including the Fourteenth Amendment Equal Protection Clause and § 1985(3) invoked by Petitioner satisfy the first prong of the *Rachel* test. The Eighth Circuit's decision flatly rejecting them as a basis for § 1443(1) removal clearly is contrary to the import of this Court's rulings in *Rachel* and *Peacock*.

On removal Petitioner made interrelated allegations that the concerted actions of state police, prosecutorial and judicial officials as well as private litigants and their attorneys violated his rights to be free from racially discriminatory state actions (prohibited by the Fourteenth Amendment Equal Protection Clause) and private/official conspiracies motivated by racial animus (violating § 1985(3)). Petitioner pleaded violations of both the deprivation and the prevention or hindrance clauses of § 1985(3). *See* Appendix (Complaint in federal case incorporated into Notices of Removal of state court actions).

The Court's decision in *Bray v. Alexandria Women's Health Clinic*, No. 90-985, 61 U.S.L.W. 4080 (U.S. Jan. 13, 1993) refutes absolutely Respondents' arguments that § 1985(3) does not specifically relate to racial equality. *Bray* reaffirmed the teaching of *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971) that § 1985(3) was enacted with a view to prohibiting conspiracies animated by racial discrimination. *Bray*, 61 U.S.L.W. at 4081, 4085. Here the Eighth Circuit's summary affirmance of the district court's ruling that a "race-oriented economic lynching", 967 F.2d at 1256, does not suffice for removal was contrary to the congressional intent behind § 1443.[1]

That no substance supports the Eighth Circuit's decision is revealed by Respondents' amazing claim that the Equal Protection Clause is not a law providing for equal civil rights under § 1443(1). The Court long ago held that violation of a removing party's right to be free from racial discrimination guaranteed by the Equal Protection Clause properly invoked federal court jurisdiction. *Strauder v. West Virginia*, 100 U.S. 303, 311-12 (1879) (cited at page 15 of the Petition). Respondents do not claim *Strauder* is no longer good law, but lamely attempt to distinguish authorities not even cited by Berry in his Petition. *See* Respondent's Brief at 16-17. *Strauder* was cited in *Shelley v. Kraemer*, 334 U.S. 1, 16 (1948) as part of a body of jurisprudence in which the Court recognized that state action in violation of the Fourteenth Amendment "is equally repugnant to the constitutional commands whether directed by state statute or taken by a judicial official in the absence of statute". *Accord Palmore v. Sidoti*, 466 U.S. 429 (1984) (citing *Shelley* and *Strauder*).

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1. The Civil Rights Removal Act (first version enacted in 1866) and the Ku Klux Klan Act (originating in 1871) were part and parcel of the Reconstruction-era legislation to enforce the then-new amendments to the Constitution, which had a principal purpose of eradicating slavery and racial discrimination. Respondents' argument that § 1985(3) does not specifically address racial equality ignores history.

Petitioner alleged on removal that the acts of state authorities including prosecutors, judges and sheriffs violated his rights to equal protection because they were motivated by racially discriminatory practices which caused him to be subjected to unlawful criminal procedures and irreparably destroyed his ability to mount an effective defense in state court against these punitive damages claims. *See* Appendix. Certiorari must issue to clarify that violations in state court proceedings of the equal protection right to be free from racially discriminatory practices provide a proper basis for § 1443 removal, whether that equal protection right is found in the Fourteenth Amendment or in the Ku Klux Klan Act.

II.

IN LIMITED INSTANCES UNEQUAL APPLICATION OF STATE LAW AND STATE PROCEDURES TO A REMOVING DEFENDANT FOR THE PURPOSE OF RACIAL DISCRIMINATION ARE GROUNDS FOR A CIVIL RIGHTS ACT REMOVAL.

Respondents engage in extensive argument on factual matters underlying Petitioner's removal papers, disagreeing [mostly] on the interpretation of certain events in the state criminal and civil proceedings against Mr. Berry. Respondents, however, do not deny that the St. Charles County police authorities raided Mr. Berry's estate ostensibly for evidence of cocaine trafficking and child pornography (none was found). Neither do they deny that the raid was based on false information about Petitioner given to police and judicial authorities by Respondent Hosana Huck's husband; nor that the police and prosecuting authorities held press conferences in which they intentionally lied to the St. Charles public that their raid had produced evidence of drug trafficking and child pornography by Petitioner; nor that amid wide publicity Petitioner was charged with three counts of felony child abuse based on videotapes given to St. Charles prosecutors by

Respondent Huck's husband (who got those tapes from Respondent's attorneys); nor that in the course of that criminal prosecution a St. Charles prosecutor said about Petitioner: "One way or another we're going to get that nigger"; nor that the felony child abuse charges were dropped without Petitioner arguing even one motion; nor that the county judge who denied Petitioner's motion to dismiss Respondents' civil tort claims for workers compensation preemption should have disqualified himself; nor that the same judge had a long-running romantic relationship with one of the class-action plaintiffs in another removed case against Petitioner making the same allegations; nor that the same judge viewed in his home without knowledge of Petitioner's attorneys videotapes on which the Respondents' claims are based; nor that the county judges who imposed monetary sanctions on Petitioner and counsel should have disqualified themselves because they were the father and uncle of one of the attorneys for some of the class-action plaintiffs. Nor do they deny that the judge who approved the search warrant for the raid, having chosen to believe the obvious lies about Petitioner, first refused to disqualify himself and then ruled against Petitioner in the tort litigation, but later disqualified himself when he acknowledged the conflict.[2] For the purposes of ruling on this Petition his claims must be taken as true since the district court refused Petitioner's request to hold an evidentiary hearing. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) and cases cited in Petition at 13. Thus Respondents' disagreement about certain facts pleaded on removal are of no import at this stage.

The real issue before the Court is: May the combined acts of prosecutorial, judicial and police authorities acting in concert with private litigants and their attorneys in interrelated criminal and civil proceedings taken for the purpose of discriminating against a

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2. Respondents attempt to bolster their arguments by noting at page 1 of their Brief that Petitioner has not sued any state court judges. For good reason, *Mireles v. Waco*, 112 S. Ct. 286 (1991), he has not done so.

prominent African-American because of his race and to destroy him financially justify a § 1443(1) removal?

Respondents advocate a rule that reduced to its essence would never permit a § 1443(1) removal unless the defendant could point to a specific state law that would mandate racially discriminatory actions. Under Respondents' rule only in the face of such a Jim Crow legislative mandate could one "predict" that a defendant would be denied or could not enforce "specific" federal rights in terms of racial equality. *See* Respondents' Brief at 18-20. Their crabbed view of § 1443(1) is not required by the Court's precedents. First, *Rachel* upheld removal of a state prosecution under a racially neutral law because the purpose of the prosecution was racial discrimination. Second, § 1985(3), as well as the Equal Protection Clause of the Fourteenth Amendment, provides for "specific" federal rights — *e.g.*, the right to be free from racial conspiracies which deprive persons of their equal civil rights and the right to be free from private acts which prevent state officials from protecting equal civil rights. Finally, there is no need to "predict" a violation of Chuck Berry's equal civil rights at this late date.

A. Discriminatory State Enactment Is Not Required For Removal Under § 1443(1).

The *Rachel* Court upheld removal of state criminal prosecutions under a racially neutral state trespass law because the prosecutions were undertaken for a racially discriminatory purpose. 384 U.S. at 804. Following *Rachel* the Sixth (*Conrad v. Robinson*, 871 F.2d 612 (1989)) and Eleventh (*Sofarelli v. Pinellas County*, 931 F.2d 718 (1991)) Circuits have upheld removals of state civil cases proceeding under racially neutral laws but filed for racially discriminatory purposes. If *Rachel* no longer is good law on this point it should be overruled, otherwise certiorari should issue to resolve the conflict created by the Eighth Circuit's ruling.

B. Section 1985(3) Provides For "Specific" Federal Rights In Terms Of Racial Equality.

At least one point on which all the opinions in *Bray v. Alexandria Women's Health Clinic, supra,* seemingly agree is that § 1985(3) protects the specific rights to be free from conspiracies (1) intended to deprive persons of equal protection of the laws and (2) intended to hinder or prevent state authorities from giving or securing to all persons the equal protection of the laws. *See Bray, supra,* 61 U.S.L.W. at 4083-84 (majority opinion), at 4087 (opinion of Justice Souter), at 4094 (opinion of Justice Stevens), and at 4105 (opinion of Justice O'Connor). Not decided in *Bray* was the scope of those rights. This Petition for Writ of Certiorari presents an apt decisional vehicle for those issues, as well as an appropriate opportunity to restate the continued vigor of § 1985(3).

Petitioner has alleged in his removal papers violations of both the first (deprivation) and second (hindrance) clauses of § 1985(3). Berry alleged that state police and prosecutorial officials conspired with private litigants (the Respondents) and their attorneys to deprive him of his right to equal protection of the laws on the basis of his race. Petitioner alleged that the acts of Respondents and their attorneys so corrupted the administration of justice by the St. Charles County court system as to deprive him of equal protection of the laws, thereby implicating the hindrance clause. *See Bray, supra,* 61 U.S.L.W. at 4090 (Opinion of Justice Souter) for highly germane observations about "exercises of state authority by conspiratorial usurpation."

C. Petitioner Already Has Been Deprived Of His Rights To Equal Protection Of The Laws In The Course Of The Interrelated Criminal And Civil Prosecutions.

In one of their most glaring examples of denying Petitioner equal protection of the laws on the basis of his race, the St. Charles County courts refused to dismiss any of the claims against him despite Mr. Berry's invocation of the exclusivity defense of

Missouri Workers Compensation law. Respondents clearly alleged in their petition that Mr. Berry was their actual legal "employer" at the Southern Aire Restaurant where they allegedly were filmed while using restroom facilities.[3] Mr. Berry moved to dismiss on the basis that the Missouri Workers Compensation law, R.S. Mo. Chapter 287, was the exclusive remedy for employees allegedly suffering personal injuries arising out of the course and scope of their employment. That motion was denied by a St. Charles County judge who enjoyed a long-running relationship with one of the class-action plaintiffs suing Mr. Berry. That judge should have disqualified himself under Canon of Judicial Conduct 3(C), but his failure to do so was not the only violation of Petitioner's equal protection rights.

Without question, Missouri law required the dismissal of the damages claims by former employees of the Southern Aire Restaurant because of the workers' compensation defense. In *Zahn v. Associated Dry Goods Corp.*, 655 S.W. 2d 769 (Mo. App. 1983) the court held a woman's claim for personal injury damages suffered in an assault and rape that occurred in her employer's's parking garage was barred by the Missouri Workers' Compensation Act. More recently in *Crofts v. Harrison*, 772 S.W. 2d 901 (Mo. App. 1989), the female employee was working overtime when her supervisor sexually assaulted her at the employer's place of business. The court held "as a matter of law" that the sexual assault "arose 'out' of plaintiff's employment" and the court claim was barred. *Id.* at 904. *See also Russell v. U.P.S., Inc.*, 666 F.2d 1188, 1192 (8th Cir. 1981) (even for sexual assault producing intentional infliction of emotional distress, any tort claim against employer barred by Missouri Workers' Compensation Act). To the extent that Mr. Berry may have been only a "supervisory" employee of Respondents, and not their

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3. We refer the Court to Defendants-Appellants' Separate Appendix, Vol. I at pp. 148-49 and 198-99, filed in the Eighth Circuit.

employer (as Respondents now claim, contradicting their petition in state court), he shared in the same immunity provided to an employer under the Workers' Compensation Act. *State ex rel. Hartman v. Kintz*, 832 S.W. 2d 9 (Mo. App. 1992).

Mr. Berry was entitled to the equal benefit of Missouri law on the exclusivity of workers' compensation as a remedy for a sexual offense which occurs at work. As an employer, he stood in no different position than the employers in *Zahn*, *Crofts* and *Russell*. But because of his status as an African-American in an overwhelmingly White county defending claims by hundreds of White females for punitive damages, Petitioner was denied the equal protection of Missouri law.

Additionally, in his removing papers Petitioner alleged unequal and discriminatory application of pretrial sanctions against him in many instances by judges who had a blood relationship with one of the attorneys for some of the class action plaintiffs against Petitioner. Those specific instances of misconduct need not be detailed at this stage, but suffice it to say such actions continue to this day.[4]

A "prediction" that Berry's equal civil rights will be violated, *Rachel, supra*, is not necessary in this case. They have been, repeatedly. Unless the Court grants the Writ, trials on hundreds of claims in St. Charles County will follow with tainted juries, biased

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4. After remand was granted by the district court, but while this Petition for Writ of Certiorari was pending, the class-action tort case for punitive damages by hundreds of White females against Petitioner was certified under Missouri law to proceed as a class action. The circumstances of that certification were an outrage, *e.g.*, the state court took no testimony. And still more monetary sanctions have been imposed against Petitioner, this time because he requested that an inspection of his estate, where the raid occurred and already inspected by Respondents, take place when the media was not present. Berry's request to delay the inspection until a time when TV "news" crews would not be present was denied by the state court judge and he was sanctioned $1,472.00.

judges, and arbitrary procedures. It is not enough to say that Petitioner has a potential remedy on appeal in state court for the racially motivated discrimination. Respondents by then will have carried out successfully their racially motivated economic lynching.[5]

CONCLUSION

The decisions below that the Ku Klux Klan Act is merely a law of general application are clearly wrong. Certiorari should issue to prevent such crippling misinterpretation of a major civil rights law from standing as precedent on this and other vital points. If the Court should not be disposed to grant this Petition yet, Petitioner urges that the Court seek the views of the Government on whether certiorari should issue. No civil removal cases under the 1964 Civil Rights Act has reached the Court. And no removal case has presented such an egregious discriminatory pattern by a state court. Full review by the Court is needed.

Respectfully submitted,

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5. Petitioner must address one last point raised in Respondents' Brief at page 23 where they falsely claim that Petitioner was sanctioned by "one federal district judge". Indeed, all the district judges handling the removal petitions denied Rule 11 sanctions. *See Crawford v. Berry*, No. 91-1597-C-3 (E.D. Mo., Feb. 21, 1992 Order at 3.)

APPENDIX A — COMPLAINT IN *BERRY V. BOGGS* FILED IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION FILED AUGUST 8, 1991

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Cause No.
91-1586-C-2

Related to Cause No.
90-2084-C-4 (Judge Cahill)

CHARLES E. BERRY, a/k/a CHUCK BERRY and FRANCINE GILLIUM,

Plaintiffs,

v.

RONALD L. BOGGS, VINCENT J. HUCK, WILLIAM G. BOWMAN, STEVE ROACH, SHARON OAKLEY, RICH FEAGAN, ANN FEAGAN, JOHN E. PRICE, THOMAS F. JONES, HOSANA HUCK, a/k/a SUZY HUCK, TAMMY M. LIPP,

AND

DOES I through CC,

Defendants.

COMPLAINT FOR DAMAGES,
INJUNCTIVE AND DECLARATORY RELIEF

Come now plaintiffs Charles E. Berry a/k/a Chuck Berry and Francine Gillium and for their Complaint for Damages, Injunctive

and Declaratory Relief against defendants, and each of them, state as follows:

Introduction

1. This action is brought against defendants William G. Bowman, Steve Roach, and Sharon Oakley, all St. Charles County Sheriff's officers, deputies or employees, in their official and individual capacities, against defendants Vincent J. Huck and Rich Feagan in their personal capacities as well as in their official capacities to the extent they may have acted as police agents or otherwise under color of law, against defendant Ronald L. Boggs in his personal capacity and in his official capacity to the extent he may have acted as an agent for prosecutorial authorities or otherwise under color of state law, and against Ann Feagan, John E. Price, Thomas F. Jones, Hosana Huck a/k/a Suzie Huck, and Tammy M. Lipp in their personal capacities. All defendants named above are persons who conspired between and among themselves and with the former Prosecuting Attorney of St. Charles County, William J. Hannah, and other persons acting under color of state law to deprive plaintiffs of their constitutional rights and/or other persons seeking to deny to plaintiffs the equal protection of the laws. It seeks compensatory and punitive damages, a permanent injunction against defendants to halt further prosecution in the courts of St. Charles County, Missouri of certain civil suits against plaintiffs Berry and Gillium by defendants Boggs, Price, and Jones as attorneys, and all other named defendants as parties, investigators, or witnesses for the many constitutional reasons set forth below, as well as declaratory judgments that the Missouri law on punitive damages awards in civil cases under which defendants and their agents and co-conspirators are proceeding against plaintiffs Berry and Gillium is unconstitutional, at least as applied to plaintiffs Berry and Gillium; and that the racially-motivated actions of defendants and their co-conspirators and agents have

made it impossible for the constitutional rights of plaintiffs to be protected by the Missouri courts in the defense of certain civil actions now pending in the Circuit Court of St. Charles County, Missouri, (*see* Paragraphs 23, 33 *infra*), and that the Missouri laws under which defendants proceed against plaintiffs in state court are vague, overly broad, arbitrary, lack sufficient rational foundation, and are otherwise constitutionally defective, all for the reason that plaintiffs Berry and Gillium constitute a suspect classification for purposes of equal protection analysis.

2. In the 13 months before the filing of this Complaint, there were initiated, filed and prosecuted against defendant Berry maliciously baseless criminal charges in the Circuit Court of St. Charles County, Missouri, all filed in bad faith by the Prosecuting Attorney's office headed by William J. Hannah, against plaintiff Berry at the behest of and in collusion and conspiracy with all named defendants and/or defendants herein. *See State of Missouri v. Charles E. Berry*, St. Charles County Circuit Court Cause No. CR190-1201F. The conduct of Hannah in this same conspiracy was the subject of a prior suit in this Court before District Judge Cahill, *Berry v. Hannah*, No. 90-2084-C-4, which was terminated on November 20, 1990 by the dismissal of all felony charges brought against plaintiff Berry by Hannah pursuant to Berry's agreement with Hannah for the dismissal of that suit. Thus Hannah is not now named as a defendant herein.

3. The conduct of all defendants named herein and Hannah before, during and after said prosecution violated and continues to violate plaintiffs Berry's and Gillium's fundamental rights secured by the First, Fourth, Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §§ 1983, 1985. The objects of said conspiracy between and among these defendants and Hannah were to punish and humiliate

plaintiffs because of Mr. Berry's race and Ms. Gillium's overt flouting of racial taboos; to incarcerate Mr. Berry; to advance the ecomonic interests and financial ambitions of these defendants by means of inflaming racial bias and animus; to misuse the police powers of the State of Missouri in private lawsuits against plaintiffs; otherwise to deprive plaintiffs of equal protection of the laws and their property by unconstitutional means and abuse of official powers; to pollute the pool of potential jurors in St. Charles County and the State of Missouri against plaintiffs with inflammatory, racially bigoted, officially-sponsored, derogatory and false publicity; and to inflame judicial bias and official attitudes of racial animus against plaintiffs in St. Charles County so much that plaintiffs would be unable to secure a fair trial or even proper pretrial procedures. To a significant, indeed shocking, extent, defendants have been largely successful in their achievement of these purposes, expecially the latter one, although plaintiff Berry, as mentioned in Paragraph 2 *supra*, has been able thus far to frustrate defendants' efforts to incarcerate him. Nevertheless defendants Boggs, Lipp, and Huck and other persons and defendants continue to plot and conspire to contrive grounds on which to seek the further prosecution of Mr. Berry.

Jurisdiction and Venue

4. Jurisdiction rests in this Court pursuant to 28 U.S.C. §§ 1331, 1343 and 42 U.S.C. § 1983, 1985. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), in that all parties hereto reside in this district and the pertinent facts giving rise to this cause of action occurred in this district.

Claims for Relief

5. The Complaint is brought before the Court pursuant to 42 U.S.C. §§ 1983, 1985 and the First, Fourth, Fifth, Sixth, Seventh,

Eighth and Fourteenth Amendments to the United States Constitution because defendants, and each of them, either acted under color of state law to deprive plaintiffs of their constitutional rights for reasons of racial animus and/or combined and conspired to act in concert to deprive plaintiffs of certain constitutional rights including equal protection of the laws and to damage plaintiffs in their persons and property.

Parties

6. Plaintiff Charles E. Berry a/k/a Chuck Berry (hereinafter referred to as "Berry") is an African-American musician and entertainer of world renown who has a farm and maintains his business office and a second home at Berry Park near the City of Wentzville in St. Charles County, Missouri. He was perhaps the principal founder of the school of music known as rock-'n-roll. The late John Lennon of the Beatles declared that Chuck Berry's name was a synonym for this type of music. Plaintiff Francine Gillium ("Gillium") is a white woman who long has been closely identified with plaintiff Berry. She resides at Berry Park and is the manager of plaintiff Berry's business office at Berry Park. She also was, in the early stages of the conspiracy which is the subject of this Complaint, the owner of a business in the City of Wentzville which formerly operated a restaurant known as The Southern Aire Restaurant which was located in a building owned by plaintiff Berry. That business was totally destroyed and forced to close, and plaintiff Gillium suffered a financial loss of $120,000.00, all as a direct and proximate result of the unlawful conspiracy which is the subject of this Complaint.

7. Defendant Ronald L. Boggs, Esq. ("Boggs") and William J. Hannah, Esq. ("Hannah") were both formerly the elected St. Charles County Prosecuting Attorney. Hannah at all times relevant hereto acted under color of state law and defendant Boggs acted

under color of state law and/or conspired and acted in concert with Hannah and other persons acting under color of state law to deprive plaintiffs of certain of their constitutional rights and conspired directly and indirectly to deny them equal protection of the laws.

(a) Defendant William G. Bowman ("Bowman") at all times relevant hereto was a Deputy Sheriff in the St. Charles County Sheriff's Department and a member of the St. Charles County Multijurisdictional Enforcement Group ("MEG"), a special anti-drug task force composed of law enforcement officers from the St. Charles County Sheriff's Department and certain municipal police forces in St. Charles County.

(b) Defendant Steve Roach ("Roach") at all times relevant hereto was a Deputy Sheriff and a Detective Sergeant in the St. Charles County Sheriff's Department.

(c) Defendant Sharon Oakley ("Oakley") at all times relevant hereto was an employee of the St. Charles County Sheriff, maintained a close relationship with an influential public figure in top ranks of the St. Charles County Courthouse, and was a client of defendant Boggs as a plaintiff in the class-action lawsuit against plaintiff Berry described *infra* Paragraph 33.

(d) Defendant Vincent J. Huck ("Huck" or "Vincent Huck") at all times relevant hereto acted under color of state law as an operative or informant for the MEG, the St. Charles County Sheriff's Department and the St. Charles County Prosecuting Attorney; worked as a paid investigator for defendant Boggs, as well as for defendants Price and Jones; was married to defendant Hosana Huck a/k/a Suzy Huck; and combined and conspired with defendants Boggs, Price, Jones, Hosana Huck, Rich Feagan, Ann Feagan, Bowman, Lipp and Roach and with Hannah and others to

deprive plaintiffs of certain of their constitutional rights including equal protection of the laws.

(e) Defendant Rich Feagan at all times relevant hereto was a former Sheriff's Deputy for the St. Charles County Sheriff, a former investigator for the St. Charles County Prosecuting Attorney when defendant Boggs was the elected Prosecuting Attorney, a paid private investigator for defendant Boggs and other attorneys pursuing litigation in the courts of St. Charles County against plaintiffs Berry and Gillium, a process server in St. Charles County, the husband of defendant Ann Feagan, and combined and conspired directly and indirectly to act in concert with defendants Boggs, Huck and others to deprive plaintiffs of certain constitutional rights including equal protection of the law.

(f) Defendant John E. Price ("Price") at all times relevant hereto employed defendant Vincent Huck as an investigator against plaintiff Berry, represented defendant Hosana Huck along with defendant Jones, pursued litigation as an attorney licensed by the State of Missouri in the courts of St. Charles County against plaintiffs Berry and Gillium, and combined and conspired to act in concert directly and/or indirectly with then-Prosecuting Attorney of St. Charles County Hannah and with defendants Boggs, Jones, Vincent Huck, Hosana Huck, Bowman, Roach, Oakley and Lipp to deprive plaintiffs of certain constitutional rights including equal protection of the laws.

(g) Defendant Thomas F. Jones ("Jones") at all times relevant hereto employed defendant Vincent Huck as an investigator against plaintiff Berry, represented defendant Hosana Huck together with defendant Price, pursued litigation as an attorney licensed by the State of Missouri in the courts of St. Charles County against plaintiffs Berry and Gillium, and

combined and conspired to act in concert directly and/or indirectly with then-Prosecuting Attorney of St. Charles County Hannah and with defendants Boggs, Price, Vincent Huck, Hosana Huck, Bowman, Roach, Oakley and Lipp to deprive plaintiffs of certain constitutional rights including equal protection of the laws.

(h) Defendant Hosana Huck a/k/a Suzy Huck at all times relevant hereto was the wife of defendant Vincent Huck, a client of defendants Price and Jones, pursued litigation in the courts of St. Charles County against plaintiffs Berry and Gillium, and combined and conspired directly and/or indirectly with defendants Jones, Price, Vincent Huck, Boggs, Oakley, Bowman, Roach and with Hannah to deprive plaintiffs of certain constitutional rights including equal protection of the laws.

(i) Defendant Ann Feagan at all times relevant hereto was the wife of defendant Rich Feagan, a client of defendant Boggs as a plaintiff in a class-action lawsuit, *see infra* Paragraph 33, against plaintiff Berry, and combined and conspired directly and/or indirectly to act in concert with defendants Rich Feagan, Boggs, Vincent Huck, Oakley, Bowman, Roach and with Hannah to deprive plaintiffs of certain constitutional rights including equal protection of the laws.

(j) Defendant Tammy M. Lipp at all times relevant hereto was a client of defendant Boggs as a plaintiff in the class-action lawsuit against plaintiff Berry, and combined and conspired directly and/or indirectly to act in concert with defendants Roach, Jones, Price, Boggs, Vincent Huck and with Hannah to deprive plaintiffs of certain constitutional rights including equal protection of the laws.

8. All defendants herein acted at all times relevant here as

agents of each other, and all defendants conspired directly or indirectly with one another and with Hannah or his agents or with persons acting under color of state law to deprive plaintiffs of the equal protection of the laws and of other constitutional rights.

9. In conjunction with the St. Charles County Sheriff and the St. Charles County Prosecuting Attorney the MEG participated in a massive and prolonged raid upon and search of Berry Park and the seizure of plaintiffs' papers, personal effects, currency and property on June 23, 1990. *See* Paragraph 31 *infra*.

10. The precise identities and/or precise roles of all 200 defendant Does are presently unknown to plaintiffs. Defendants Does I through XX are officers, agents, officials or employees of St. Charles County, either with the County Prosecuting Attorney, the County Sheriff, or the County Circuit Court. Does XXI through XXX are other employees of St. Charles County. Does XXXI through XL are officers, agents or employees of certain municipal police forces in St. Charles County. Does XLI through XLIX are other employees or officials of certain municipalities in St. Charles County. Does L through LIX are members, agents or employees of MEG. Does LX through LXIX are informants and operative of the MEG who acted under color of state law. Does LXX through LXXIX are other persons acting under color of state law who combined and conspired to act in concert with Hannah and defendant Boggs, Jones, Price, Vincent Huck, Bowman, Oakley, and Roach in the planning for and execution of the June 23, 1990 raid upon Berry Park and/or in planning, preparing, obtaining and/or arranging for the issuance of the falsely contrived affidavit which purported to authorize that raid. Does LXXX through LXXXIX are persons who either acted under color of state law or combined and conspired to act in concert with persons acting under color of state law to publicize the above-mentioned raid or to

distort publicly its results and import or otherwise to malign, disparage and denigrate plaintiff Berry. Does C through CLXXXIX are members of the putative class on whose behalf the proposed class against plaintiff Berry, *see* Paragraph 33 *infra*, is brought or their attorneys or other persons working in concert with them to deprive plaintiff Berry of equal protection of the laws and other constitutional rights and to damage him in his property, by proceeding to assert claims without merit in a courthouse inflamed with racial animus as set forth *supra* and *infra*. Does XCC through CC are persons who otherwise combined and conspired to act in concert to deprive plaintiffs of equal protection and certain other constitutional rights. All Doe defendants either acted under color of state law or combined and conspired to deprive plaintiffs of equal protection and certain other of their constitutional rights.

FACTS GIVING RISE TO CAUSE OF ACTION

11. For at least five years prior to 1990 defendant Vincent Huck worked as an operative or informer for the MEG, the St. Charles County Sheriff's Department, and the U.S. Drug Enforcement Administration ("DEA") and during the course of those duties accepted jobs from plaintiffs Berry and Gillium at Berry Park and pretended to be a construction worker at Berry Park while he surveilled plaintiff Berry in the hope of reaping a windfall from the government agencies he reported to for the seizure of illegal drugs he hoped to find at Berry Park. In fact, there were no drugs at Berry Park because plaintiffs did and do abhor their use.

12. Nevertheless defendant Huck was obsessed with a delusional belief, based on plaintiff Berry's race, public prominence and artistic success, that plaintiffs kept and trafficked in major quantities of cocaine and other illegal drugs at and from Berry Park. Defendant Huck communicated those delusional

beliefs to and inspired feelings of racial animus among Hannah and defendants Boggs, Jones, Price, Oakley, Bowman, Roach and others including but not limited to certain of the Doe defendants and other defendants herein.

13. In the course of his role as an undercover operative or informer defendant Vincent Huck committed, participated in and/or directed several illegal searches of private, locked buildings or residences at Berry Park which were tantamount to officially-sanctioned burglary. In committing those burglaries Mr. Huck acted in conspiracy with and under the direction of defendants Boggs, Price, and/or Jones and under a *de facto* grant of immunity from prosecution for burglary and other criminal acts by Hannah, defendant Bowman and other St. Charles County law enforcement and prosecutorial officials.

14. During said burglaries defendant Vincent Huck searched through plaintiffs' personal effects and private business papers and records. While conducting such searches Mr. Huck seized personal and confidential records, mementoes, and other personal property from plaintiffs, but was never able to find any illegal drugs at Berry Park.

15. Defendant Vincent Huck shared the results of these unauthorized seizures with defendants Boggs, Price, Jones and Rich Feagan who thereupon embarked upon a concerted plan to deprive plaintiffs of the equal protection of the laws and a number of coordinated efforts to enrich themselves at the expense of plaintiffs by inflaming racial animus toward plaintiff Berry as a man of color and high public visibility.

16. Presumably the last such officially-sanctioned burglary and illegal search and seizure carried out by defendant Vincent

Huck apparently occurred on or about September 10, 1989 at Berry Park. Mr. Huck at or before that time committed larceny of numerous private videotape and photographs made by or depicting plaintiffs as well as certain videotapes which had been made by defendant Huck and others at The Southern Aire Restaurant.

17. The private photographs which were burglarized by Huck also included, *inter alia*, some which displayed plaintiff Berry, an African-American, standing next to various, unidentified white women of legal age in a state of complete frontal nudity. All these were confidential Polaroid snapshots taken by plaintiff Berry over the course of many years to protect himself against possible future claims.

18. On or about September 28, 1989 defendant Vincent Huck and other persons sold said stolen photographs to Drake Publishers, Inc., publisher of the pornographic High Society magazine. Said photos were sold by Huck and others to Drake Publishers in New York City pursuant to a written agreement for $15,000.00 cash.

19. Defendant Vincent Huck during said burglaries also had "seized" under color of state law while acting for Hannah and defendants Bowman, Oakley, and Roach certain personal videotapes of plaintiff Berry which Hannah and these defendants permitted Mr. Huck to convert to his own use and to share with defendants Boggs, Price and Jones. Defendants Huck and Boggs thereupon entered into illicit negotiations with video distributors, writers and publishers in Western Europe and throughout the United States in an effort to capitalize upon Mr. Berry's stature as a world-class entertainer. Defendants Price and Jones meanwhile conspired with defendants Vincent Huck, Hosana Huck, Boggs and other persons to deprive plaintiff Berry of the equal protection

of the laws by agreeing to blackmail him under threat of filing lawsuits and seeking his criminal prosecution on legally spurious but racially inflammatory charges.

20. Simultaneously defendant Vincent Huck arranged with codefendant Hosana Huck and defendants Price and Jones for these latter defendants to represent his wife as attorneys in a blackmail attempt, *see* Paragraph 23 *infra*, against plaintiffs. That claim was based upon allegations that codefendant Hosana Huck has been videotaped while using the restroom at The Southern Aire Restaurant, owned and operated by plaintiff Gillium but not actively managed by her. In fact, during part of the period that codefendant Hosana Huck worked as a cook at The Southern Aire, persons other than plaintiffs Berry and Gillium had engaged in some surveillance, by videotape and otherwise, of employees using the restroom facilities to combat complaints of marijuana usage by restaurant employees. Also defendant Vincent Huck had access as a pretensive construction worker to certain private areas of The Southern Aire from which such videotape surveillance was conducted.

21. Defendants Vincent Huck, Price and Jones and others proposed to blackmail plaintiffs by selling to plaintiff Berry for $10 million, as an ostensible settlement of the alleged damages of codefendant Hosana Huck, both the videotapes illegally seized by defendant Vincent Huck while acting under color of state law in burglarizing various buildings at Berry Park and videotapes allegedly depicting Hosana Huck and others in the restrooms of The Southern Aire made by defendant Vincent Huck himself while acting under color of state law and/or other persons pursuant to the conspiracy described above in Paragraphs 2-3, 5 and 7-10.

22. Plaintiff Berry refused to pay to all or any of defendants

the sum of $10 million or, indeed, any sum at all for blackmail or any videotapes stolen from him under color of state law or made by defendant Vincent Huck or any other person. Defendants Jones, Price, Vincent Huck and Hosana Huck thereupon began to conspire among themselves and with others to deny plaintiffs equal protection of the law by damaging them in their personal reputations and property.

23. Acting in concert to deny plaintiffs their constitutional rights, including equal protection of the laws, and to damage them in their persons and property, defendants Jones and Price and defendant Vincent Huck as a "legal investigator" and defendant Hosana Huck agreed and arranged among themselves and with others to capitalize upon plaintiff Berry's celebrity with lurid allegations of inter-racial sexual peeping and other inter-racial sexual titillation, and pursuant to that agreement on or about December 26, 1989 filed in the Circuit Court of St. Charles County with great fanfare and amid maliciously-generated extreme publicity a lawsuit styled *Hosana Huck et al. v. Charles Berry,* No. CV189-7019, based at least in part upon videotapes stolen from Berry Park by defendant Vincent Huck acting under color of state law.

24. Defendant Vincent Huck since has falsely testified under oath that he "found" said videotapes in a trash bin full of garbage behind The Southern Aire Restaurant, and that supposedly he went there to conduct that search in response to an anonymous telephone "tip". In truth, as set forth above and below, defendants Huck, Jones, Price, and Hosana Huck acting in conjunction with defendants Boggs and Rich Feagan, and through them with the other defendants, arranged, conspired, and contrived to prepare said suit and file it and otherwise to influence the public, the media, and especially to inflame and prejudice with racial animus and bias the public authorities and court system of St. Charles County with

lurid, racially oriented sex-scandal allegations focused upon the prominence of plaintiff Berry as an African-American of international stature and the "white" ancestry of the women allegedly videotaped by him at The Southern Aire Restaurant.

25. As a direct and proximate result of the filing of said civil lawsuit in St. Charles County, the aforesaid wrongful conspiracy among and actions of said defendants, and the inflamed racial climate in St. Charles County, plaintiff Francine Gillium was forced to close The Southern Aire Restaurant and to terminate all its operations within a few days. She thereby incurred a loss of approximately $120,000 as the owner-operator of The Southern Aire. Plaintiff Berry was proximately damaged in his property as a direct and proximate result of this aspect of the illegal conspiracy among defendants because he, as the owner of the building in which The Southern Aire Restaurant had operated, thus lost a valuable, rent-paying commercial tenant. Further, because of the inflamed racial climate in and around the City of Wentzville, he has been unable for more than one (1) year to located another tenant for the building, and same remains vacant up till the date this suit is filed, all to his damage in an amount of not less than $50,000.

26. During the spring of 1990 defendants Price, Jones and Huck conspired among themselves to deprive plaintiff Berry of the equal protection of the laws by arranging to procure perjured testimony against him and to arrange for his prosecution if at all possible. Defendants Price and Jones conspired with defendant Huck for Huck to plant or conceal illegal drugs at Berry Park to implicate plaintiffs in the event they could arrange for an official search of Berry Park. These defendants conspired with defendant Boggs, and through him with then-Prosecuting Attorney Hannah and defendants Rich Feagan, Bowman, Oakley and Roach to have Berry Park searched, *supra* Paragraph 9 and *infra* paragraph 28, to

have plaintiff Berry prosecuted on whatever charges defendants and Hannah could conjure up against him, and to make plaintiffs the victims of an all-out publicity assault by Hannah and other public officials and of a campaign or series of arbitrary decisions of the judiciary of St. Charles County in private litigation between plaintiffs and many of defendants herein. *See*, for example, Paragraphs 23 *supra* and 33 *infra*. Pursuant to his agreement with defendants Price and Jones defendant Huck proceeded to plant a quantity of a controlled substance, to wit, marijuana in an amount sufficient to constitute a felony under Missouri law. *See* Paragraph 39 *infra*.

27. In furtherance of their conspiracy and to assist Vincent Huck and defendants Hosana Huck, Ann Feagan, Oakley and Lipp in their claims against plaintiffs, at Hannah's request on June 23, 1990 a search warrant was issued by the St. Charles County Circuit Court to allow the MEG and other police authorities to search Mr. Berry's living quarters, offices, studio and other structures located at Berry Park in Wentzville, Missouri. The basis for said search warrant was an outrageously false and exaggerated affidavit sworn out by defendant William G. Bowman a Sheriff's Deputy in St. Charles County. Said affidavit detailed the incredible exploits and claims of one supposedly "reliable, confidential informant", who was defendant Vincent Huck and who had obvious, readily apparent and well-known motives to disparage, defame and denigrate Mr. Berry because of the pending civil suit described above. Further, it is apparent that the search warrant affidavit was so lacking in indicia of probable cause as to render belief in its *bona fides* unreasonable, thus calling into question the commitment of the St. Charles County Circuit Court to protect the civil rights of plaintiffs, as well as its interest in so doing.

28. It is evident from the search warrant affidavit that Vincent

Appendix A

Huck had been an informant for St. Charles County authorities dating back to at least December 1988. At various times from December 1988 to June 1990, according to the search warrant affidavit, Vincent Huck made absurdly false allegations to the DEA and St. Charles County authorities regarding purported cocaine "trafficking" by Mr. Berry.

(a) For example, the search warrant affidavit falsely stated, based upon information from Vincent Huck, that a certain female "delivers large quantities of cocaine to Charles 'Chuck' BERRY". Further, the affidavit, again based upon information from Vincent Huck, stated that Mr. Berry is "always in possession of large quantities of cocaine".

(b) The affidavit also stated with no valid basis, that, according to confidential informer Huck, on March 12, 1989 Mr. Berry supposedly was to have returned to St. Louis via Lambert Airport "with cocaine secreted in his baggage of [sic] his guitar case . . .". However, upon search of the "suitcase and guitar case it was determined there was no cocaine of [sic] any quantity present".

(c) Finally, the affidavit irresponsibly state that, according to Huck, on June 20, 1990 Mr. Berry supposedly returned to St. Louis via Lambert Airport with a "large amount of cocaine" which supposedly was being stored on Mr. Berry's property.

(d) Said affidavit and informant at all relevant times were inherently incredible, and there was no credible basis for any accusations against Mr. Berry or for a search of Berry Park.

29. In fact, plaintiff Berry did not then or ever transport any cocaine nor did he store same on his property. A subsequent search

of Mr. Berry's personal quarters, offices, studio and other structures at Berry Park conducted during the course of nearly a full day by a large search party revealed that no cocaine was present.

30. Said bogus search warrant affidavit also revealed that the "reliable confidential informant", defendant Vincent Huck, had provided three VHS videocassette tapes to the St. Charles County Sheriff's Department. Said videotapes were seized and stolen by Vincent Huck on or before September 9, 1989 from Berry Park, and Vincent Huck was then acting in concert with Hannah and defendants. The Huck burglary/seizure was undertaken in the course of an officially-sponsored prosecutorial investigation of Mr. Berry under the direction of Hannah with inspiration, advice and encouragement from defendants Bowman, Roach, Oakley, Boggs, Price, Jones and Rich Feagan. Said tapes, to the extent they were not made by defendant Huck or his co-conspirators, were seized by defendant Huck without a valid search warrant and concomitantly their search and seizure violated plaintiff Berry's rights under the Fourth and Fourteenth Amendments to the United States Constitution.

31. On or about June 23, 1990 the St. Charles County Multijurisdictional Enforcement Group "raided" the Berry Park complex in Wentzville, Missouri. The search and seizure took place without Mr. Berry's knowledge or consent, without the consent of plaintiff Gillium, and at a time when Mr. Berry was not present at Berry Park. In the course of that search the MEG and its accompanists caused extensive damage to the walls of certain structures at Berry Park. Among other items, the St. Charles County authorities seized various pieces of Mr. Berry's personal property including currency totalling $123,000.00, of which $122,501.00 was eventually returned and $499,00 was kept by

unknown persons. Even though Hannah had no legitimate reason to seize, much less continue to hold that cash, defendants Bowman, Roach, Oakley and he along with some of the defendants Does refused continuously to return it to plaintiff Berry, thereby taking his property without due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution. Rather, Hannah and defendant Bowman turned it over to federal authorities after he could no longer justify holding it. Said currency was not finally returned to Mr. Berry until on or after September 25, 1990 when the United States Attorney for the Eastern District of Missouri declined to "file a forfeiture complaint". At that point the sum of $499.00 was missing and never has been found or replaced. Further, plaintiff Berry lost the use of those funds and interest on them. Despite the irresponsible and patently incredible allegations from Vincent Huck in the search warrant affidavit, the St. Charles County authorities found absolutely no cocaine on Mr. Berry's property nor did they find any evidence that he was ever engaged in cocaine trafficking.

32. On or about June 27, 1990 City of St. Peters in St. Charles County Police Chief Ronald Neubauer disseminated to the press the details of said "raid", despite the fact that no charges had been filed against Mr. Berry up to that time. The St. Charles County authorities advised to the press that they had found a "supply of narcotics" and that so-called "drug records" were seized from Mr. Berry's property. Further, the St. Charles County authorities made specific reference to claims (already known to be false) that Mr. Berry was involved in trafficking "multi-kilogram quantities of cocaine". Said allegations were disseminated to the mass media in a press conference without any privilege, were not a necessary incident of any police or prosecutorial function, and were made solely for the purposes of defaming plaintiff Berry and inflaming the population and judiciary of St. Charles County against him and

plaintiff Gillium inasmuch as no cocaine of any quantity had been found on his property in the course of the "raid".

33. On the same day that St. Peters Police Chief Neubauer conducted his press conference relating to the "raid" on Berry Park, a class-action lawsuit was filed in the St. Charles County Circuit Court by various "Doe" plaintiffs against Mr. Berry. *See Crawford, et al. v. Charles Berry, et al.*, No. CV190-3667 (St. Charles County Circuit Court, State of Missouri). (The "Representative Parties" or "class action" or "putative class action" hereinafter). That putative class-action civil suit alleged that plaintiff Berry purportedly filmed unidentified plaintiffs with a videotape camera while they were using the bathroom facilities at The Southern Air Restaurant or at Berry's farm known as Berry Park. Both locations are in St. Charles County, Missouri. The attorney for the "Representative plaintiffs" in the putative class-action suit, defendant Ronald L. Boggs, was formerly the elected Prosecuting Attorney of St. Charles County, was a central conspirator between and among all the defendants herein, and was remains an influential figure in St. Charles County politics. Also he was at all times relevant hereto the personal attorney for defendants Vincent Huck, Sharon Oakley, Ann Feagan, Rich Feagan and Tammy M. Lipp, and defendant Vincent Huck acted and acts as his paralegal and legal investigator. The "raid" on plaintiff Berry's property and the subsequent press conferences mentioned above and below were carefully coordinated by the St. Charles County authorities with the filing of the class-action civil suit against plaintiff Berry. Further, the below-described criminal proceedings against plaintiff Berry, now dismissed (*see* Paragraphs 21 *supra* and 39 *infra*), were initiated, brought and maintained pursuant to an agreement or agreements between and among defendants herein and Hannah to deprive plaintiffs Berry and Gillium of their constitutional rights to due process of law, equal protection of the laws, their personal liberty and their

property, and to advance private civil litigation in which all defendants had a direct racial, financial, political and/or personal bigotry interest.

34. The day after the class-action civil suit was filed against Mr. Berry amid great publicity, on June 28, 1990, Hannah called a press conference at his St. Charles County Prosecuting Attorney's office. In that press conference, Hannah gave an "account" of the "raid" on Mr. Berry's property. At that news conference Hannah related that the authorities were "looking for" cocaine on Mr. Berry's property: "cocaine was of course one of the major items we were looking for, and yes, as in many times when you conduct a search, you don't find everything that is listed in your affidavit". By this statement Hannah sought to create the false impression that plaintiffs dealt in and kept cocaine, but had successfully eluded the MEG's search for same.

35. Further, at the news conference, Hannah stated that "Berry is involved in cocaine trafficking, earning millions a year bringing drugs to St. Louis in his guitar case". Hannah then released to the press the bogus search warrant affidavit from defendants Bowman, Roach and Vincent Huck already known by all defendants and hannah to be false, baseless and malicious. In so doing, defendants and Hannah disseminated to mass media around the United States and in several foreign countries the spurious allegations described above in Paragraph 28. At the press conference Hannah then discussed various portions of said affidavit. Specifically, Hannah as agent and conspirator of, with, for and among defendants made reference to allegations that Mr. Berry was engaged in "drug [cocaine] trafficking". By another report of Hannah news conference, unnamed St. Charles County authorities, i.e., defendant Roach and/or Hannah, claimed they had seized "pornographic tapes" which allegedly displayed underaged

women "using" the restroom. These statements and those described in Paragraphs 32, 34 *supra* and Paragraph 36 *infra* deprived Mr. Berry of due process of law and denied him and plaintiff Gillium equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

36. The statements made by Hannah at his news conference, by his own admissions, were made even before a decision was made about issuing any charges against Mr. Berry, i.e., at a time when the case was "being reviewed" by Hannah. These statements made by defendants through Hannah, as outlined above, were defamatory, unprivileged, and maliciously uttered for the purpose of harming Mr. Berry and plaintiff Gillium by rendering them unable to obtain a fair trial (through falsely associating the plaintiffs with the use, possession, and trafficking of cocaine and child pornography) on the various civil claims by or against them and potential criminal charges.

37. Co-conspirator Hannah held said news conference for the purposes, *inter alia*, of depriving plaintiffs of equal protection and due process and assisting defendants herein with the prosecution of their suits and claims against plaintiffs.

38. On July 15, 1990 the St. Louis Post-Dispatch ran an editorial severely criticizing Hannah's handling of the "raid" and his prejudicially defamatory news conference regarding plaintiff Berry. The editorial noted that Hannah was "quick to call a news conference, even though no cocaine was found" at Berry Park. The news conference by Hannah and the news leaks described in Paragraph 35 *supra* were coordinated with the filing of the class-action lawsuit to advance the conspiracy which is the subject of this case. They served no *bona fide* prosecutorial role or function.

39. Four days after the critical editorial in the *St. Louis Post-*

Dispatch was published, and to assist defendants in their civil suits and claims against plaintiffs by polluting the jury pool and poisoning the mind of the entire St. Charles County judiciary, Hannah on July 19, 1990 filed criminal charges against Mr. Berry. These charges included one felony count for alleged possession of over 35 grams of marijuana, *see* Paragraph 26 *supra*, and three felony counts of purported "child abuse". Hannah and all defendants herein had then and still possess significant racial, personal, financial and political interests in initiating and continuing the baseless prosecution of plaintiff Berry, and the issuance of said criminal charges was the direct result and product of illegal conspiracy among and between Hannah and defendants Bowman, Roach, Oakley, Boggs, Price, Jones, Vincent Huck, Rich Feagan and Lipp and, in turn, between these defendants as agents and/or attorneys for or co-conspirators with the remaining defendants.

40. The "child abuse" charges, alleged to have risen under RSMo. § 568.060, asserted that plaintiff Berry was guilty of photographing or filming children less than seventeen years old "engaging in a prohibited sexual act. . . ". The Missouri statute defines a "prohibited sexual act" as "nudity, if such nudity is to be depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction". *Id.* The charges against Mr. Berry under this statute violated his First Amendment freedoms and were unconstitutional as applied to plaintiff in these circumstances. Further, the meritless "child abuse" charges were based upon videotapes seized or stolen by Vincent Huck acting at the direction of Hannah and defendants Bowman, Boggs, Jones and Price as described in Paragraphs 13-16, 19 above, and not during the June 23 "raid", and actions taken by them and Hannah and defendants Roach, Lipp, Boggs and Vincent Huck in furtherance of the conspiracy described above.

41. It is apparent that Hannah initiated the criminal investigation of plaintiff Berry, conducted the June 23 "raid" upon Mr. Berry's Berry Park complex, and held his aforementioned June 28, 1990 press conference for racial motives and for the purpose of helping his informer defendant Vincent Huck and all these defendants in the civil suits mentioned above. The entire prosecution of plaintiff Berry by Hannah was brought in bad faith and irretrievably violated plaintiff Berry's constitutional rights and deprived him and plaintiff Gillium of equal protection of the laws and of any chance of receiving fair trials in the various civil suits between plaintiffs and certain of defendants in the courts of St. Charles County specifically and the State of Missouri generally.

42. In early July of 1990 St. Charles County Assistant Prosecuting Attorney John Zimmerman, the prosecutor who worked with defendants Bowman, Roach, Oakley, Boggs Vincent Huck and Lipp to build a criminal case against plaintiff Berry, said in reference to plaintiff Berry, "One way or another we are going to get that nigger". This statement by the lead trial counsel from Hannah's office on the Berry criminal prosecution made manifest that the criminal prosecution of plaintiff Berry was not undertaken in good-faith but was rather motivated by racial bias and prejudice and the aforesaid conspiracy, accordingly, violated plaintiff Berry's right to equal protection due process as guaranteed by the Fourteenth Amendment to the United States Constitution.

43. On or about September 26, 1990, three full months after the illegal search and seizure of plaintiff Berry's property, the United States Attorney finally decided to return to plaintiff Berry $122,501.00 of the $123,000.00 in United States currency seized by the St. Charles County authorities. This substantial sum of money was, first, taken and held by Hannah in concert with other St. Charles County public authorities named as defendants herein

and unnamed, and, later, turned over to federal authorities for the purpose of attempting to cripple, or to hamper plaintiff Berry financially in his defense of the criminal charges and the above-mentioned civil cases against him in violation of his rights under the Sixth, Seventh and Fourteenth Amendments.

44. The prosecution of plaintiff Berry by Hannah and the defendant St. Charles County officials at the behest of defendants Boggs, Price, Jones and Vincent until the filing of the case before Judge Cahill in this Court known as *Berry v. Hannah, see* Paragraphs 2, 39-40 *supra,* blatantly violated the Fourth and Fourteenth Amendments to the United States Constitution in that Hannah and defendants Bowman, Roach and Oakley and a Judge in St. Charles County (a) obtained and issued the search warrant, in reliance upon an affidavit containing patently false statements from a so-called "confidential informant", defendant Vincent Huck, who had been shown in the past to be extremely unreliable and motivated by private animus against plaintiff Berry and who obviously was lying in an effort to promote his and all defendants' interests in civil litigation against plaintiff Berry; and (b) Hannah thereafter consciously publicized the search warrant after he necessarily knew it and defendant Bowman's affidavit and defendant Huck's supporting information were false. All St. Charles County prosecuting authorities and court officials, including Hannah, had already learned, if they did not know all along, the true facts which demonstrated that Vincent Huck was not a reliable informant, but they continued in bad faith to pursue and to permit prosecution of plaintiff Berry pursuant to the conspiracy described above.

45. Hannah's public statements pursuant to said conspiracy linking plaintiff Berry to alleged "cocaine trafficking", made during Hannah's press conference at his office in St. Charles, when

no credible evidence existed to support such an extravagant claim against an African-American of great celebrity and when, in fact, no such criminal charges were levied against Mr. Berry, clearly establish official and racial bias and prejudice against Mr. Berry and advanced the conspiracy among and interests of defendants here.

46. Further, said reckless and unsupported statements by Hannah about plaintiff Berry were made for the purpose of defaming Mr. Berry, and were made completely outside the scope of Hannah's prosecutorial authority. In addition, the conscious efforts of Hannah to release conspicuously to the press the bogus search warrant affidavit, already known by him to be false, which contained the aforementioned defamatory falsehoods about Mr. Berry was a violation of plaintiff's constitutional rights by one acting under color of state law.

47. The prosecution of plaintiff Berry caused him and co-plaintiff Gillium great and immediate irreparable injury, including, but not limited to, infringement upon their Seventh and Fourteenth Amendment rights to due process of law and a free, impartial and fair jury trial in the defense of the aforementioned civil cases against them and in Mr. Berry's prosecution of his civil case against defendants Jones and Hosana Huck. Further, it placed Mr. Berry in jeopardy of an unconstitutional incarceration since the Missouri Supreme Court then and now interprets RSMo. §§ 568.060 *et seq.* in a literal and overbroad fashion without applying the constitutional gloss or constraints on its interpretation needed to make some pass constitutional muster under the First and Fourteenth Amendments. Not least, the prosecution of plaintiff Berry had and continues to have the effect of denying them equal protection of the laws by subjecting plaintiffs Berry and Gillium to numerous arbitrary, unfair, hostile and unconstitutional, rulings by

the judiciary of St. Charles County in plaintiffs' defense and conduct of the aforementioned civil cases, including but not limited to harsh and unjust decisions by judges who share the highest degree of consanguinity with lawyers possessing a financial interest in the aforementioned civil suits against plaintiffs and/or in similar litigation. Said rulings have deprived plaintiffs of equal protection, due process of law and other rights protected by the First, Seventh and Fourteenth Amendments to the Constitution.

48. As a direct and proximate result of the aforesaid unlawful conspiracy by and among defendants and Hannah, plaintiffs Berry and Gillium have suffered the aforesaid monetary losses and plaintiff Berry lost a guest appearance before an enormous national television audience on the "Tonight Show" on the NBC network. Further, plaintiffs have sustained and will continue to suffer incalculable losses for which they have no adequate remedy at law as the aforesaid civil suits against them are prosecuted and new, similar cases against them are filed as part of the aforesaid conspiracy and/or in its wake, in circumstances where plaintiffs have been and are denied, and cannot enforce in the courts where said actions are brought, their civil rights including their right to equal protection of the laws by defendants and persons acting with them. All judges in St. Charles County were and are elected in partisan elections, as is the chief administrator of that Circuit Court. The politics of St. Charles County is dominated by two lily-white machines. Those machines control all jobs within or related to the St. Charles County judiciary. On information and belief, no person of color has ever held any political office there. Within living memory no African-American has ever been elected to, or served on, either the Republican or the Democrat County Central Committee. These Committees play a crucial role, *inter alia*, in the allocation of courthouse jobs as part of a political patronage system.

49. Defendants' aforesaid conspiracy to violate the civil rights of plaintiffs and their above-described actions in furtherance of same were and are intentional, malicious and willfully done in bad faith for unconstitutional motives and by unconstitutional means in violation of the civil rights of plaintiffs and contrary to 28 U.S.C. §§ 1983, 1985 and otherwise.

WHEREFORE, plaintiffs Charles E. Berry and Francine Gillium move this Honorable Court for the following relief:

(1) To enjoin defendants, and each of them from taking any further actions in furtherance of the aforesaid conspiracy, including but not limited to barring them from further prosecution of, or otherwise taking any measures, actions or steps to the prejudice of plaintiff Berry and/or plaintiff Gillium in the following cases now pending in the Circuit Court of St. Charles County, Missouri:

(a) *Representative Parties (Crawford et al.) v. Berry et al.*, Nos. CV190-3667CC and CV190-5925CC

(b) *Huck et al. v. Berry et al.*, No. CV189-7019CC

(c) *Jones, Hosana Huck & McKinley v. Berry and Huck*, No. CV190-2537CC; and

(2) To declare that the "raid" on Berry Park by the St. Charles County Sheriff and the MEG on June 23, 1990; and the subsequent filing of baseless criminal charges by the Prosecuting Attorney of St. Charles County against plaintiff Berry; and all related acts performed by or at the request of some or all of these defendants were

motivated by racial animus and have made it impossible in a practical sense for plaintiffs to protect and enjoy the full measure of their constitutional rights in the courts of St. Charles County and the State of Missouri; and

(3) To declare that the Missouri law on punitive damages awards in civil cases under which certain of the defendants and other persons asserting similar claims seek to proceed against plaintiffs is constitutionally defective as to plaintiffs Berry and Gillium under the guarantees of the Fifth, Eighth and Fourteenth Amendments; and

(4) To declare that, because plaintiffs Berry and Gillium constitute a suspect classification for equal protection analysis and for other good reasons, the Missouri laws of torts under which certain of these defendants seek to recover against plaintiffs are unconstitutional as applied to these plaintiffs for the reasons, *inter alia*, that they lack sufficient certainty as to the availability of the statutory employer defense provided by Chapter 287 of the Missouri Revised Statutes and thereby deny plaintiffs equal protection and are overly broad and so unduly vague as to create an arbitrary classification and/or to lack sufficient rational foundation as applied to these plaintiffs; and

(5) To award plaintiff Gillium compensatory damages against defendants, and each of them, in the amount of ONE HUNDRED TWENTY THOUSAND ($120,000.00) DOLLARS, together with prejudgment interest and her reasonable costs and expenses in this action, including attorneys' fees; and

(6) To award plaintiff Berry compensatory damages against defendants, and each of them, in an amount that will fairly and justly compensate him for this damages and losses sustained as a direct result of defendants' aforesaid conspiracy, including the costs of and legal fees incurred in his criminal defense of the now-dismissed charges filed against him in the Circuit Court of St. Charles County by Hannah, as aforesaid; the costs of and legal fees incurred in his prosecution of *Berry v. Hannah* filed in this Court, No. 90-2084-C-4; and the loss of use of his funds in the amount of $123,000.00 from June 23, 1990 until September 26, 1990; together with prejudgment interest and his reasonable costs in this action, including attorneys' fees; and

(7) Such other relief as the Court may deem just and proper.

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